



DEPARTMENT OF THE AIR FORCE  
HQ WARNER ROBINS AIR LOGISTICS CENTER (AFMC)  
ROBINS AIR FORCE BASE GEORGIA

64-10  
Tyner  
10 Feb 00

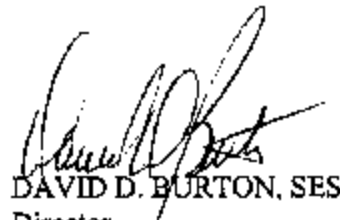
07 FEB 2000

MEMORANDUM FOR SEE DISTRIBUTION LIST

FROM: WR-ALC/PK

SUBJECT: Acquisition of Commercial Items, FAR Part 12 (HQ AFMC/PK Memo,  
5 January 2000)

1. HQ AFMC/PK has issued the attached memo, which gives further guidance on the pricing arrangements of FAR Part 12 and associated provisions. The HQ AFMC/PK memo could be interpreted to cloud the guidance I gave in my 19 August 1999 memo. Therefore, I want to reiterate my policy so that there will be no confusion. "A cost line item on a FAR Part 12 contract is permissible when the cost line item is ancillary to the main purpose of the contract and represents a relatively small portion of the total effort."
2. Please make sure this policy is disseminated to all buying personnel. I have attached both the recent HQ AFMC/PK memo and my 19 August 1999 memo for ease of review. If there are any questions regarding this memorandum, please contact Margie Tyner at 6-9001.

  
DAVID D. BURTON, SES  
Director  
Directorate of Contracting

Attachments:

1. WR-ALC/PK Memo, 19 August 1999
2. HQ AFMC/PK Memo, 5 January 2000

2000-2-H

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## DEPARTMENT OF THE AIR FORCE

HQ WARNER ROBINS AIR LOGISTICS CENTER (AFMC)  
ROBINS AIR FORCE BASE GEORGIA

19 AUG 1999

MEMORANDUM FOR SEE DISTRIBUTION

FROM: WR-ALC/PK

SUBJECT: Acquisition of Commercial Items, FAR Part 12

1. Recent statistics indicate that we are making positive strides in increasing the use of FAR Part 12 commercial acquisition procedures. As of 30 Jun 99, WR-ALC/PKO was utilizing commercial procedures 92% of the time (a 3% increase from last year) and the central buying offices were using commercial procedures 26.5% of the time (a 76.6% increase from last year). Despite these encouraging numbers, there is still opportunity for expanded usage. This memorandum is issued for the purpose of clarifying my position on the use of FAR Part 12 procedures.

2. One of the most significant changes that has occurred with respect to commercial acquisitions has been the broadening of the definition of a Commercial Item. Previously, the FAR defined a commercial item in restrictive terms. The new FAR 2.101 definition for a commercial item is much more inclusive, as Congress intended. Thus, many more of our acquisitions can now meet the definition of a commercial item. In addition to this, the contracting officer, in conjunction with their requirements counterparts, has the authority to determine commerciality. In fact, the GAO has stated:

"Determining whether a product or service is a commercial item is largely within the discretion of the contracting agency, and such a determination will not be disturbed by our Office unless it is shown to be unreasonable. (B-277241.8, 21 Oct 97)"

Given the above, each new acquisition should be examined to see if the item meets the current definition. If the answer is "yes," then FAR Part 12 procedures are to be used.

3. The greatest constraint from utilizing FAR Part 12 procedures is the prohibition against the use of any contract type other than firm-fixed price contracts or fixed-price contracts with economic price adjustment. FAR Part 12.207 states:

"Agencies shall use firm-fixed-price contracts or fixed-price contracts with economic price adjustment for the acquisition of commercial items. Indefinite-delivery contracts (see Subpart 16.5) may be used where the prices are established based on a firm-fixed-price or fixed-price with economic price adjustment. Use of any other contract type to acquire commercial items is prohibited."

In the past, there has been a tendency for a strict interpretation of this regulation to mean a FAR Part 12 contract cannot contain a cost line item. However, I have discussed this matter with Brad Adams, WR-ALC/JAN, and have decided that a cost line item on a FAR Part 12 contract is permissible when the cost line item is ancillary to the main purpose of the contract and represents a relatively small portion of the total effort. As always, good business judgment should be used when making this determination.

4. Because the FAR language concerning Part 12 is continually changing, I am directing that all buyers and contracting officers read or reread FAR Part 12 and its supplements to familiarize themselves with the procedures contained therein. Again, if your acquisition meets the definition of a commercial item and fits within the guidelines provided in paragraph 3 above, FAR Part 12 procedures shall be used.

5. At my request, WR-ALC/PKPB will be developing a training class on FAR Part 12 to be given to the workforce early in the new fiscal year. Any specific needs or desires that you may have with respect to this training should be forwarded to Margie Tyner, WR-ALC/PKPB, 69001.

Original Signed By:

DAVID D. BURTON, SES  
Director  
Directorate of Contracting

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# DEPARTMENT OF THE AIR FORCE

HEADQUARTERS AIR FORCE MATERIEL COMMAND  
WRIGHT PATTERSON AIR FORCE BASE OHIO

WPC  
1/12/00

5 JAN 2000

## MEMORANDUM FOR SEE DISTRIBUTION

FROM: HQ AFMC/PK  
4375 Chidlaw Road, Room S208  
Wright-Patterson AFB OH 45433-5006

SUBJECT: FAR Part 12 Contract Types and Tailoring of FAR Part 12 Contract Clauses

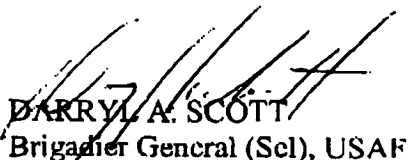
REFERENCE: HQ AFMC/PKP Policy Letter, "Acquisition of Commercial Items, FAR Part 12. Clarifications," 24 Mar 97

1. We've received several questions on what's permissible under FAR Part 12, so let me clarify the policy on using cost-reimbursement type contracts (or line items), incentives, and tailoring Part 12 clauses. FAR Part 12.207 states agencies shall use firm-fixed-price contracts or fixed-price contracts with economic price adjustment to acquire commercial items. No other contract type is authorized for commercial acquisition in the statute FAR Part 12.207 is based on.
2. That said, many of you have pointed out that Time and Materials (T&M) instruments are a common industry practice in certain marketplaces (e.g., aircraft maintenance, repair, and overhaul). The statutory limitation prevents expanded use of FAR Part 12 commercial contracts in these instances. We have submitted a legislative initiative requesting permission to use T&M type contracts for commercial item acquisition via several fora. Until this initiative is adopted, we recommend you use firm fixed price level of effort arrangements for situations where the parameters of the commercial requirement cannot be adequately defined to allow for the use of a fixed price arrangement.
3. Some of you have asked if it's OK to use award fee or award term provisions under FAR Part 12. Yes, as long as the incentives are based on technical performance, not cost performance.
4. FAR Part 12.302(a) encourages tailoring provisions and clauses for acquiring commercial items. "...[C]ontracting officers may, within the limitations of this subpart, and after conducting appropriate market research, tailor the provision at 52.212-1, Instructions to Offerors-- Commercial Items, and the clause at 52.212-4, Contract Terms and Conditions-- Commercial Items, to adapt to the market conditions for each acquisition. FAR Part 12.213 allows for the incorporation of "other commercial practices" "...if the contracting officer determines them appropriate in concluding a business arrangement satisfactory to both parties and not otherwise precluded by law or Executive order." You don't need a waiver to incorporate these types of practices. For example, adding a DD Form 254 to a FAR Part 12 contract that requires security clearances for the contractor employees would not require a waiver.

5. A waiver is required by FAR Part 12.302(c) for tailoring commercial contract clauses "inconsistent with customary commercial practice." Requiring Certified Cost or Pricing Data on a FAR Part 12 contract would be an example of an inconsistent practice. You should limit such tailoring to those peculiar circumstances where government-unique clauses are necessary to ensure we receive the value our customers expect. You shouldn't use them for administrative convenience, or to eliminate risks that could be effectively managed with customary commercial practices.

6. Market research is key to successful FAR Part 12 acquisitions. Our PCOs and buyers must understand the marketplace in order to accomplish the tailoring encouraged in FAR Part 12.302(a). Usually, the commercial marketplace has developed appropriate mechanisms to manage technical and administrative risk- we should also use those mechanisms. Waivers should be rare exceptions, as the whole point of FAR Part 12 contracting is to emulate commercial practices as much as practicable.

7. My POC on this topic is Mr. Mark Bennington, HQ AFMC/PKPC, DSN 986-0325. His e-mail address is mark.bennington@wpafb.af.mil.

  
DARRYL A. SCOTT  
Brigadier General (Sel), USAF  
Director of Contracting